

**FILED**

**NOT FOR PUBLICATION**

**JUL 27 2006**

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EVERETT WILLIAM BROWNING, JR.,

Defendant - Appellant.

No. 05-30609

D.C. No. CR-03-00035-SEH

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Montana  
Sam E. Haddon, District Judge, Presiding

Submitted July 24, 2006\*\*

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Federal prisoner Everett William Browning, Jr. appeals the district court's September 27, 2005 Order confirming his 30-month sentence following this court's remand of his sentence pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). We have jurisdiction pursuant to 28 U.S.C. § 1291

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and 18 U.S.C. § 3742, and we affirm.

Browning contends that the district court erred in calculating his sentence based upon a drug quantity that was not supported by the evidence. We review for clear error, *see United States v. Cantrell*, 433 F.3d 1269, 1279 (9th Cir. 2005), and find none. Rather, we conclude that the drug quantity employed by the district court in calculating Browning's sentence was based upon sufficiently reliable evidence. *See id.* at 1284. Accordingly, the district court properly determined Browning's base offense level.

Browning next contends that the district court erred in not awarding him a reduction, pursuant to U.S.S.G. § 3B1.2, for minimal role in the conspiracy. Browning has failed to meet his burden of proving his entitlement to a § 3B1.2(b) minor participant adjustment.. *See Cantrell*, 433 F.3d at 1282. The district court properly considered the larger context of the conspiracy and Browning's culpability relative to the involvement of the other participants. *See United States v. Rojas-Millan*, 234 F.3d 464, 473 (9th Cir. 2000). In view of the evidence reflecting the extent of Browning's involvement, the district court did not clearly err in concluding Browning was not a minor or minimal participant. *See United States v. Cordova Barajas*, 360 F.3d 1037, 1042 (9th Cir. 2004).

**AFFIRMED.**